

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GEORGE L. ROSAS	§	
TDCJ-CID #711998	§	
V.	§	C.A. NO. C-05-102
	§	
PATSY PEREZ, ET AL.	§	

MEMORANDUM AND RECOMMENDATION
ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Pending is plaintiff's motion for default judgment against defendant Patsy Perez. (D.E. 25). Defendant Perez has filed a response in opposition. (D.E. 38). For the reasons stated herein, it is respectfully recommended that plaintiff's motion be denied.

I. JURISDICTION

The Court has federal question jurisdiction over this civil rights action pursuant to 28 U.S.C. § 1331.

II. BACKGROUND

Plaintiff filed suit on February 25, 2005, claiming that Patsy Perez, the District Clerk for Nueces County, and Cathy Pope Clark, an assistant attorney general in the child support division, violated his due process rights and conspired to violate his rights when they failed to advise him of the status of two pending actions concerning his parental rights.

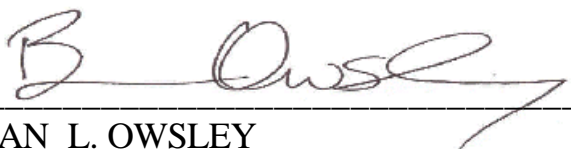
On April 29, 2005, service was ordered on Ms. Perez and Ms. Clark. (D.E.

13, 14). Despite the fact that service on Patsy Perez was ordered correctly on the Nueces County attorney, (see D.E. 13), an error was made and summons for Perez was sent to the attorney general. A corrected summons was issued, (D.E. 23), and served on Ms. Perez on June 29, 2005. (D.E. 27).

III. DISCUSSION

Plaintiff filed his motion for default judgment on June 23, 2005, arguing that he was entitled to judgment against Ms. Perez because she had failed to file an answer. (D.E. 25). However, as noted above, the original summons for Ms. Perez was incorrect, and she was not served properly until June 29, 2005. Pursuant to the Order for Service of Process, Ms. Perez had 45 days from the date on the certificate of service, that is until August 15, 2005, to file her answer. Thus, Ms. Perez has not defaulted, and it is respectfully recommended that plaintiff's motion for default, (D.E. 25), be DENIED.

Respectfully submitted this 11th day of August 2005.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1)(C), and Article IV, General Order No. 2001-6, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).